C-8.1001 (5)

Division Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 6767 /2006

PETITIONER : Sunil Kumar Garg,
S/o Shri Daya Kishan Agarwal,
Aged about 38 years,
Occupation – Contractor,
R/o Chakradhar Nagar Chowk,
Raigarh (C.G.).

-Versus-

RESPONDENTS 1. Municipal Corporation, Raigarh,
Through its Commissioner,
Raigarh (C. G.).

2. Commissioner,
Municipal Corporation, Raigarh,
Raigarh (C.G.).

P.R. No. 6998/06
Presented by Shri A.K. Singh
on 4-12-06

WRIT PETITION UNDER ARTICLE 226/[redacted] OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT OF CERTIORARI, MANDAMUS OR ANY OTHER WRIT OR DIRECTION TO DO JUSTICE IN THE MATTER.

(63)

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : Hon'ble Shri H.L. Dattu, CJ &
Hon'ble Shri V.K. Shrivastava, J

Writ Petition No. 6767 of 2006

Petitioner — Sunil Kumar Garg

Versus

Respondent — Municipal Corporation, Raigarh & Another

Present :
Shri Rajeev Shrivastava, counsel for the petitioner.
Shri V.R. Tiwari, counsel for the respondents.

ORAL ORDER

(Passed on 19th February, 2007)

The following oral order of the Court was passed by H.L. Dattu, C.J.

Petitioner is a contractor. He was awarded a contract for constructing footpath and widening of road by respondent/Municipal Corporation, Raigarh, vide their order dated 1-2-2006. For various reasons, it appears that the petitioner could not commence the construction work as per the contract awarded to him. After issuance of notice, the respondent/Corporation has issued two letters dated 15-6-2006 and 16-11-2006. Aggrieved by the said letters petitioner is before us in this writ petition.

2) Shri Rajeev Shrivastava, learned counsel appearing for the petitioner would submit that respondents without issuing a show cause notice and affording opportunity of hearing to the petitioner, could not have blacklisted the petitioner and further prohibited him

from participating in tenders that may be issued by the respondent/ Municipal Corporation, Raigarh, therefore, stated that action of the respondents is arbitrary, illegal and in violation of principles of natural justice.

3) Shri V.R. Tiwari, learned counsel appearing for the respondents would inform us that after canceling the contract that was awarded to the petitioner, the respondent/Municipal Corporation has issued fresh tender notification and thereafter has awarded the contract to a third person. Learned counsel further submits that the other contractor has already commenced the construction work, therefore, at this stage this Court need not to interfere with the impugned letters dated 15-6-2006 and 16-11-2006.

4) In this writ petition the only question arises for consideration and determination is that whether the respondent/Corporation could have blacklisted the petitioner without issuing notice to him and further could have prohibited him from participating in tenders that may be issued by the respondent Corporation. The law on the point is well settled. If a person is blacklisted, the authorities concerned have to issue a show cause notice to the person concerned and afford proper opportunity of hearing to him, but that is not done here in the instant case. The action of the respondents is not only arbitrary, but also capricious and in violation of principles of natural justice. Further, if a person is prohibited from participating in the tender that may be issued by the respondent/ Corporation, then also at least a show cause notice requires to be issued to him. In the instant case, this exercise has not been done

by the respondent/Corporation, therefore, we cannot be sustaining the orders dated 15-6-2006 & 16-11-2006 passed by the respondent Corporation and the intimation issued by the respondents in informing the petitioner that he is blacklisted and prohibited from participating in any tender that may be issued by the respondent Corporation. Accordingly, the following;

Order

1) Petition is allowed in part.

2) The impugned letters dated 15-6-2006 & 16-11-2006 are quashed.

3) Respondents are at liberty to pass appropriate orders for blacklisting the petitioner after issuing a show cause notice to the petitioner and after affording proper opportunity of hearing to him.

4) If for any reason the respondent/Corporation intends to prohibit the petitioner to participate in any tender of Municipal Corporation in future, the same requires to be done only after hearing the petitioner

5) So far as difference of higher cost is concerned, pursuant to letter dated 16/11/2006, petitioner is at liberty to take recourse available to him in accordance with law. Ordered accordingly.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice

Raju